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In re Patent No. 6,984,651	:	
Duncia, et al.	:	
Issue Date: January 10, 2006	:	DECISION ON
Application No. 10/635,946	:	PATENT TERM ADJUSTMENT
Filed: August 7, 2003	:	
Attorney Docket No. PH-7167	:	

This is a decision on the "PETITION TO CORRECT PATENT TERM PERIOD IN GENERATED PATENT UNDER 37 C.F.R. §1.181", filed March 8, 2006. Patentees request that the patent term adjustment indicated on the patent be corrected from zero (0) days to one hundred fourteen (114) days.

The application for patent term adjustment is **DISMISSED**.

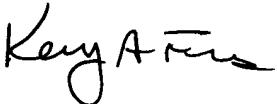
On January 10, 2006, the above-identified application matured into U.S. Patent No. 6,861,091. The instant request for reconsideration filed March 8, 2006 was timely filed within two months of the date the patent issued. See §1.705(d). The Patent issued with a Patent Term Adjustment zero (0). Patentees state that they should not have been assessed applicant delay of one hundred twenty (120) days for the submission of a "Letter to File" after the Notice of Allowance.

The adjustment of one hundred twenty (120) days for the submission of a "Letter to File" after the Notice of Allowance has been determined to be correct. By Official Gazette Notice dated June 26, 2001, the Director has advised applicants and patentees that the filing of certain papers after the mailing of a Notice of Allowance will be considered a "failure to engage in reasonable efforts" to conclude processing or examination of an application and will result in reduction of a patent term adjustment pursuant to 37 C.F.R. §1.704(c)(10). See Clarification of 37 CFR 1.704(c)(10) - Reduction of Patent Term Adjustment for Certain Types of Papers Filed After a Notice of Allowance, 1247 OG 111 (June 26, 2001). A response to an examiner's reasons for allowance is listed as an example of a paper that is considered not to be a "failure to engage in reasonable efforts" to conclude processing or examination of an application. On the other hand, a certified copy of a priority document is listed as an example of a paper that is considered a "failure to engage in reasonable efforts" to conclude processing or examination of an application. In this instance the "Letter to File" transmitted a reference that was cited in an EP communication in the corresponding European Application. Accordingly, it is concluded that the "Letter to File" is more analogous to a priority document. Moreover, Applicants could have filed the "Letter to File" at anytime during prosecution of the application, but chose to wait until after the mailing of the Notice of Allowance.

In view thereof, the correct determination of PTA at the time of issuance is **zero (0)** days (1114 days of PTO delay, reduced by 153 (120+33) days of applicant delay).

The \$200 fee set forth in 37 C.F.R. §1.18(e) has been charged to Deposit Account No. 19-3880, as authorized.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.

  
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